



Comptroller General
of the United States

902118

Washington, D.C. 20548

Decision

Matter of: Peterson Construction Company

File: B-256841

Date: August 3, 1994

George H. Peterson for the protester.
M. Michael Smith, Esq., for Santiago Development, an interested party.
Allen W. Smith, Department of Agriculture, for the agency.
Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against agency's evaluation of protester's technical proposal is denied where record shows that the proposal failed to comply with material solicitation requirements.
2. Where agency reasonably determined that protester's proposal did not meet material solicitation requirements and two firms other than the awardee submitted acceptable proposals, protester is not an interested party to maintain a protest against the agency's evaluation of the awardee's proposal and selection of awardee.

DECISION

Peterson Construction Company protests the award of a contract to Santiago Development under solicitation for offers (SFO) No. R4-93-09, issued by the Department of Agriculture, Forest Service, for the lease of office space. Peterson alleges that the agency improperly evaluated its low-priced offer and unreasonably selected Santiago for the award.

We deny the protest in part and dismiss it in part.

The Forest Service issued the SFO for approximately 19,005 usable square feet of office and related space in McCall, Idaho. The SFO contemplated the award of a 10-year lease, with two additional 5-year options, to the offeror whose technically acceptable offer had the most advantageous technical/cost relationship. The SFO listed in descending order of importance the following technical evaluation factors: (1) site, including subfactors for public

visibility, parking layout, city sewer and water, building relationship to the site, snow removal plan, public access, service/delivery access, on-off access, site safety, and landscaping; (2) space layout; and (3) energy conservation. Price was to be evaluated on the basis of the total annual price per square foot for the base and option periods, expressed as a present value.

As relevant here, the SFO required a total of 139 vehicle parking spaces. Under an SFO section entitled "Evidence of Capability to Perform," the SFO stated: "At the time of submission of offers, offerors shall submit to the contracting officer: . . . Evidence of ownership or control of site, (i.e., deed, partnership agreement, corporate resolution, etc.)."

The agency received four offers, including those from the protester and the awardee. Peterson offered the building which currently houses the Forest Service in McCall, which Peterson proposed to expand and remodel to accommodate the increased space requirements of the SFO. In addition, Peterson proposed expanding the site to meet the increased SFO parking requirements by acquiring three adjacent lots.

During discussions, the agency requested that Peterson provide a buy/sell agreement showing its ability to obtain the three adjacent lots. Peterson responded by submitting a letter from the owner of the properties expressing his intent to sell or trade the lots to Peterson "provided we can come to the kind of agreement that is acceptable to me and suitable to my needs." Peterson's response indicated further that the owner of the lots did not want "the details of the purchase agreement . . . fully disclosed until bid was awarded" and therefore declined to provide additional information. The agency subsequently concluded that Peterson's failure to establish legal control over the land to be used for parking was a major deficiency in its proposal, which the agency considered to be "technically inadequate" and "nonresponsive."

The Santiago proposal, which was the next low-priced offer, was considered a better value than the other two remaining offers. Accordingly, the Forest Service awarded Santiago the contract on March 18, 1994.

Peterson alleges that the agency erroneously concluded that Peterson did not have control over the adjacent lots necessary to expand the site for compliance with the SFO parking requirements. Peterson asserts that, if given the opportunity, it could have proved that it had control of the property. In this regard, the protester has submitted an April 13 letter from the owner of the adjacent lots. According to Peterson, that letter states that "Peterson did

indeed have a buy/sell agreement for the three adjacent "lots."

In reviewing an agency's technical evaluation, we will not reevaluate the proposal; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. Here, we think the agency reasonably concluded that Peterson's proposal did not demonstrate control over the additional property offered for parking.

First, although Peterson submitted and the agency evaluated a letter from the owner of the lots, that letter could not reasonably be construed as a "buy/sell agreement" or evidence of legal control over the site. While the letter expresses the owner's intent to sell or trade the property, the letter states that the transaction will occur "provided we can come to the kind of agreement that is acceptable to me and suitable to my needs." In our view, the agency reasonably viewed this letter as an agreement to negotiate and not as evidence of Peterson's adequate control over the site. Second, contrary to the assertions of the protester, the April 13 letter, which was prepared after the protest was filed, also does not show that an agreement was ever reached between the two parties; it simply expresses the lot owner's desire to trade them, based on their appraised value, for a 4-plex in Boise, Idaho. We therefore conclude that the Forest Service reasonably viewed Peterson's proposed site as not complying with the SFO parking and site control requirements. Since the Peterson proposal did not meet these material requirements, the agency was not² required to further consider the proposal for award.

¹The protester also complains that the Forest Service should have given greater consideration to exercising the option in Peterson's existing contract rather than conducting a competition. The decision not to exercise an option is a matter of contract administration outside our bid protest jurisdiction. Digital Sys. Group, Inc.--Recon., B-252080.2, Mar. 12, 1993, 93-1 CPD ¶ 228.

²The protest suggests that the agency failed to adequately bring the deficiency to the attention of Peterson during discussions. We disagree. The record shows that the agency requested, in writing, a buy/sell agreement showing proof of control over the lots. In any event, as stated, even during the protest proceedings Peterson has provided no evidence of a buy/sell agreement or right to purchase.

Peterson also challenges the evaluation of Santiago's proposal on various grounds and questions the selection of that firm as offering the best value to the government. We will not consider these issues since, under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. 4 C.F.R. §§ 21.0(a) and 21.1(a) (1994); ISC Defense Sys., Inc., B-236597.2, Jan. 3, 1990, 90-1 CPD ¶ 8. Since the Peterson proposal was properly determined to be technically unacceptable, and there are two other acceptable offers besides that of the awardee that would be in line for award, Peterson is not an interested party to challenge these aspects of the award decision. Id.

The protest is denied in part and dismissed in part.³

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel

³ The protester also alleges that the agency was biased against Peterson and unfairly scrutinized its proposal more critically than the others received. To show bias, there must be proof that the agency had a specific intent to injure the protester. Hill's Capitol Sec., Inc., B-250983, Mar. 2, 1993, 93-1 CPD ¶ 190. Here, as discussed, it was Peterson's noncompliance with the SFO requirements, and not alleged agency bias, which resulted in the agency's decision not to award the contract to Peterson.